

Critical phases and statutes applicable to:

Department of Health and Mental Hygiene

19 Total Citations

A victim of crime shall be treated by agents of the State with dignity, respect and sensitivity during all phases of the criminal justice process

Constitution of Maryland, Declaration of Rights, Article 47(a)

Definitions

2 Specific Statutory Provisions

Health, Safety and Protection

- *Definition of victim as it relates to incompetency and criminal responsibility*

Criminal Procedure Article, § 3-123(a)

- (a) (1) In this section the following terms have the meanings indicated.
- (2) "Defendant" means:
 - (i) a committed individual;
 - (ii) an individual found incompetent to stand trial; or
 - (iii) an individual charged with a crime and the issue of whether the individual is incompetent to stand trial has been raised or where a plea of not criminally responsible has been entered.
- (3) "Victim" means a victim of a crime of violence or a victim who has filed a notification request form under § 11-104 of this article.
- (4) "Victim's representative" includes a family member or guardian of a victim who is:
 - (i) a minor;
 - (ii) deceased; or
 - (iii) disabled.

Sexual Assault/Prohibited Exposure

- *Definition of victim as it relates to HIV exposure/testing*

Criminal Procedure Article, § 11-107(f) & (g)

- (f) (1) "Victim" means the victim of a prohibited exposure.
- (2) "Victim" includes:
 - (i) a law enforcement officer who is exposed to HIV while acting in the performance of duty; and
 - (ii) a paid or volunteer firefighter, an emergency medical technician, or rescue squad member who is exposed to HIV while acting in the performance of duty.
 - (iii) a forensic scientist, working under the direction of a law enforcement agency, who is exposed to HIV while acting in the performance of duty
- (g) "Victim's representative" means:
 - (1) the parent of a victim who is a minor;
 - (2) the legal guardian of a victim; or
 - (3) the person authorized to give consent for the victim under § 5-605 of the Health-General Article.

The statutes below generally apply to all critical phases and should be considered throughout the entire Criminal Justice process.

14 Specific Statutory Provisions

Be Heard

- *Submission of information; request for no contact*

Criminal Procedure Article, § 3-123(e)&(f)

- (e) (1) A victim or victim's representative may submit, in writing or orally, to the State's Attorney and to the facility of the Health Department that has charge of a defendant:
- (i) any information that the victim or victim's representative considers relevant; and
 - (ii) a request that the defendant be prohibited from having any contact with the victim or victim's representative, as a condition of release.
- (2) Except for a court hearing to determine if a person is incompetent to stand trial or not criminally responsible, a victim or victim's representative may submit a written or oral statement to the court or the Office conducting a hearing or review relating to a defendant under this title containing:
- (i) any information regarding the nature and consequences of the crime and any contact after the crime between the defendant and the victim or the victim's family; and
 - (ii) a request that the defendant be prohibited from having any contact with the victim as a condition of release.
- (f) (1) If a victim or victim's representative submits written or oral information under this section, the Health Department, court, or Office shall:
- (i) consider the information;
 - (ii) maintain at the facility that has charge of the defendant, separate from the medical record of the defendant, the written statement of the victim or victim's representative; and
 - (iii) delete the victim's or the victim's representative's address and telephone number before any document is examined by the defendant or defendant's representative.
- (2) (i) If a victim or a victim's representative has submitted a written factual statement under subsection (e)(2)(i) of this section to the Health Department, at least 30 days before a hearing or review under this title the Health Department shall notify the defendant or defendant's representative in writing of the intended use of the victim's or victim's representative's written factual statement and send to the defendant or the defendant's representative a copy of the written factual statement to be admitted.
- (ii) If the defendant objects to the admission of the written factual statement of the victim or victim's representative, the defendant shall notify the Health Department, State's Attorney, and court or the Office in writing no later than 20 days before the hearing or review.
 - (iii) If the timely and proper notice required under subparagraph (ii) of this paragraph is provided by the defendant, the written factual statement is inadmissible without the testimony of the victim or victim's representative.
 - (iv) Failure of the defendant to give the timely and proper notice under subparagraph (ii) of this paragraph is a waiver of the defendant's right to the presence and testimony of the victim or victim's representative and the written factual statement of the victim or victim's representative shall be admitted.
 - (v) If a defendant provides notice under subparagraph (ii) of this paragraph, the Health Department shall notify the victim that:
 - 1. the victim's or victim's representative's written factual statement is inadmissible at the hearing without the testimony of the victim or victim's representative; and
 - 2. the victim or victim's representative may attend the hearing and testify.

The statutes below generally apply to all critical phases and should be considered throughout the entire Criminal Justice process.

Be Present

- *Right to attend hearing*

Criminal Procedure Article, § 3-123(k)

- (k) (1) Except as provided in paragraph (2) of this subsection, a victim or victim's representative shall have the right to attend a hearing under this article relating to a defendant as provided under § 11-102 of this article.
- (2) At the request of a defendant, the Office, in a release hearing or a violation hearing under this subtitle for an individual found not criminally responsible, may exclude a victim or victim's representative from the expert testimony regarding the defendant's medical, psychological, or psychiatric information if the Office finds the medical, psychological, or psychiatric information is:
- (i) highly sensitive to the defendant; and
 - (ii) not relevant to whether the defendant should be released or has violated the conditions of release.

Fair Treatment

- *Guidelines - Definition of victim as it relates to fair treatment*

Criminal Procedure Article, § 11-1001(e)

- (e) "Victim" means a person who suffers direct or threatened physical, emotional, or financial harm as a result of a crime.

Notification

- *Rights of victim - Victim notification request form/written request filed*

Criminal Procedure Article, § 11-506

Whenever a person has been committed to the Department of Health and Mental Hygiene under § 3-112 of this article for a crime of violence and a victim of the crime or a victim's representative has submitted a written request to the Department of Health and Mental Hygiene for notification or submitted a notification request form under § 11-104 of this title, the victim or victim's representative has the rights provided under § 3-123 of this article.

The statutes below generally apply to all critical phases and should be considered throughout the entire Criminal Justice process.

Notification

- *Advance notice of release, escape, transfer, death of child respondent*

Criminal Procedure Article, § 11-508

- (a) (1) In this section the following words have the meanings indicated.
- (2) "Commitment unit" means a unit that a court orders to retain custody of a defendant or a child respondent and that receives a notification request form under § 11-104(f)(1) or (g) of this title.
- (3) "Release from confinement" means work release, home detention, or other administrative or statutorily authorized release of a defendant or child respondent from a confinement facility.
- (4) "Witness" means a person who:
- (i) knows of facts relating to a crime of violence or conspiracy or solicitation to commit a crime of violence; and
- (ii) 1. makes a declaration under oath that is received as evidence for any purpose; or
2. has been served with a subpoena issued under the authority of a court of this or any other state or of the United States.
- (b) This section applies to a victim or victim's representative who has submitted a notification request form under § 11-104 of this title.
- (c) This section applies if a witness requests in writing that a commitment unit notify the witness in writing of the release from confinement of a defendant or child respondent.
- (d) On receipt of a notification request form under § 11-104(f)(1) or (g) of this title or a written request from a witness for notification, a commitment unit, if practicable, shall notify the victim, victim's representative, or witness of:
- (1) receipt of the notification request form;
- (2) the date when the defendant or child respondent was placed in the custody of the commitment unit;
- (3) how to change the address to receive notice for the victim, victim's representative, witness, or the person to receive notice for the victim; and
- (4) how to elect not to receive future notices.
- (e) The commitment unit shall notify a victim, victim's representative, or witness, in advance if practicable, if any of the following events occur concerning the defendant or child respondent:
- (1) an escape;
- (2) a recapture;
- (3) a transfer to another commitment unit;
- (4) a release from confinement and any conditions attached to the release; and
- (5) the death of the defendant or child respondent.
- (f) A commitment unit may not disclose to a defendant or child respondent the address or telephone number of a witness, victim, victim's representative, or person who receives notice for the victim.
- (g) An elected public official, public employee, or public unit has the immunity described in §§ 5-302 and 5-522 of the Courts Article regarding civil liability for damages arising out of an action relating to this section, unless the official, employee, or unit acts with gross negligence or in bad faith.

The statutes below generally apply to all critical phases and should be considered throughout the entire Criminal Justice process.

Notification

- *How to request notification of proceedings*

Criminal Procedure Article, § 3-123(b)&(c)

(b) A State's Attorney shall notify a victim or victim's representative of all rights provided under this section.

(c) (1) A victim or victim's representative may request notification under this section by:

- (i) notifying the State's Attorney and the Health Department of the request for notification; or
- (ii) filing a notification request form under § 11-104 of this article.

(2) A request for notification under paragraph (1)(i) of this subsection shall designate:

- (i) the address and telephone number of the victim; or
- (ii) the name, address, and telephone number of a victim's representative.

(3) A victim or victim's representative may, at any time, withdraw a request for notification.

- *Notification by Health Department*

Criminal Procedure Article, § 3-123(d)

(d) If a victim or victim's representative has requested notification in the manner provided under subsection (c) of this section, the Health Department shall promptly notify the victim or the victim's representative in writing when:

- (1) the Health Department receives a court order to examine a defendant under this title;
- (2) the Health Department receives a court order committing a defendant to the Health Department under this title;
- (3) a hearing relating to a defendant is scheduled under this title;
- (4) the Health Department receives notice that a defendant has applied for a hearing or filed a petition for release;
- (5) the Office recommends that a committed person be released under this title;
- (6) the Health Department submits a recommendation to the court for a defendant's conditional release;
- (7) the facility of the Health Department that has charge of a defendant has notified the State's Attorney that a defendant is absent without authorization; or
- (8) the Health Department receives a court order for the conditional release or discharge from commitment of a defendant.

- *Notice of person's absence without authorization*

Criminal Procedure Article, § 3-123(h)

(h) The Health Department shall promptly notify the State's Attorney and a victim or a victim's representative who has requested notification regarding a defendant under this section if:

- (1) the defendant is absent without authorization;
- (2) a hospital warrant is issued for the defendant; or
- (3) notification is required under § 11-508 of this article.

- *Notice of hearing*

Criminal Procedure Article, § 3-123(j)

(j) Before a hearing under this article relating to a defendant, the victim or victim's representative shall be notified of the proceeding as provided under § 11-104 or § 11-503 of this article.

The statutes below generally apply to all critical phases and should be considered throughout the entire Criminal Justice process.

Notification

- *Receive notice of threat to harm victim*

Courts and Judicial Proceedings Article, § 5-609

- (a) (1) In this section the following words have the meanings indicated.
- (2) "Mental health care provider" means:
- (i) A mental health care provider licensed under the Health Occupations Article; and
 - (ii) Any facility, corporation, partnership, association, or other entity that provides treatment or services to individuals who have mental disorders.
- (3) "Administrator" means an administrator of a facility as defined in § 10-101 of the Health-General Article.
- (b) A cause of action or disciplinary action may not arise against any mental health care provider or administrator for failing to predict, warn of, or take precautions to provide protection from a patient's violent behavior unless the mental health care provider or administrator knew of the patient's propensity for violence and the patient indicated to the mental health care provider or administrator, by speech, conduct, or writing, of the patient's intention to inflict imminent physical injury upon a specified victim or group of victims.
- (c) (1) The duty to take the actions under paragraph (2) of this subsection arises only under the limited circumstances described under subsection (b) of this section.
- (2) The duty described under this section is deemed to have been discharged if the mental health care provider or administrator makes reasonable and timely efforts to:
- (i) Seek civil commitment of the patient;
 - (ii) Formulate a diagnostic impression and establish and undertake a documented treatment plan calculated to eliminate the possibility that the patient will carry out the threat; or
 - (iii) Inform the appropriate law enforcement agency and, if feasible, the specified victim or victims of:
 - 1. The nature of the threat;
 - 2. The identity of the patient making the threat; and
 - 3. The identity of the specified victim or victims.
- (d) No cause of action or disciplinary action may arise under any patient confidentiality act against a mental health care provider or administrator for confidences disclosed or not disclosed in good faith to third parties in an effort to discharge a duty arising under this section according to the provisions of subsection (c) of this section.

The statutes below generally apply to all critical phases and should be considered throughout the entire Criminal Justice process.

Notification - Defendant Civilly Committed

- *Notice to victim of escape, recapture, transfer, release or death of defendant*

Criminal Procedure Article, § 3-123(l)

- (l) (1) This subsection applies only to a defendant as defined in subsection (a)(2)(ii) or (iii) of this section after the criminal charges against the defendant have been dismissed under § 3-107 or § 3-108 of this subtitle.
- (2) If a victim or victim's representative has requested notification in the manner provided under subsection (c) of this section, the Health Department shall promptly notify the victim or the victim's representative in writing if the defendant:
 - (i) escapes;
 - (ii) is recaptured;
 - (iii) is transferred to another facility;
 - (iv) is released; or
 - (v) has died.

Privacy

- *Non-disclosure of victim/witness address and phone number*

Criminal Procedure Article, § 11-508(f)

- (f) A commitment unit may not disclose to a defendant or child respondent the address or telephone number of a witness, victim, victim's representative, or person who receives notice for the victim.

Miscellaneous

- *Receive help, care and support provided by the State*

Criminal Procedure Article, § 11-802

- (a) The General Assembly finds:
 - (1) that many innocent persons suffer personal physical or psychological injury or die because of crimes or delinquent acts or in their efforts to prevent them or apprehend persons committing or attempting to commit them;
 - (2) that these persons or their dependents may as a result suffer disability, incur financial hardships, or become reliant on public assistance; and
 - (3) that there is a need for government financial assistance for these victims.
- (b) The policy of the State is that help, care, and support be provided by the State, as a matter of moral responsibility, for these victims.

- *Applicability of guidelines*

Courts and Judicial Proceedings Article, § 3-8A-34

The guidelines provided under § 11-1003 of the Criminal Procedure Article apply to victims and witnesses of delinquent acts.

Department of Health and Mental Hygiene

In order to preserve and protect a victim's right to justice, each victim of a crime shall have the rights outlined below during critical stages of the criminal justice process

First contact with Victim

1 Specific Statutory Provision

Fair Treatment

- *Payment for transportation of body from site of autopsy*

Health - General Article, § 5-305

(g) The State budget shall include an appropriation to carry out this subtitle, including provisions for:

- (1) The Commission may employ a staff in accordance with the State budget;
- (2) The necessary expenses for transportation of a body for examination by a medical examiner or for autopsy; and
- (3) In the case of a victim of homicide, the necessary expenses for transportation of the body from the site of the autopsy or examination to a location within the State specified by the victim's family.

Notification

- *Responsibility to notify victim when court orders examination of offender*

Criminal Procedure Article, § 11-204

As provided under § 3-122 of this article, the Department of Health and Mental Hygiene shall notify a victim of a crime of violence or a victim or victim's representative who has filed a notification request form under § 11-104 of this title whenever the Department receives a court order to examine a defendant to determine whether the defendant was criminally responsible for the alleged crime or is competent to stand trial.

Post-conviction/Post-disposition

1 Specific Statutory Provision

Monetary Damages -- Restitution

- *Priority of payment when inmate is in work release program*

Correctional Services Article, § 3-804

- (a) An inmate who is employed in the community under a work-release plan shall surrender to the Division the inmate's total earnings less any payroll deductions required by law.
- (b) (1) The Division shall deduct from the inmate's earnings in the following order of priority:
- (i) an amount the Division determines to be the cost to the State of providing food, lodging, and clothing for the inmate;
 - (ii) fees assessed under § 2-118 of this article;
 - (iii) the actual and necessary food, travel, and other expenses of the inmate when released from actual confinement under the work-release program;
 - (iv) subject to paragraph (3) of this subsection, any amount that the inmate is legally obligated to pay to support the inmate's dependents; and
 - (v) the amount that a court orders to be paid as restitution.
- (2) Any balance that remains after the deductions are made under subsection (a) of this section shall be:
- (i) credited to the inmate's account; and
 - (ii) paid to the inmate on release.
- (3) Any amount deducted under paragraph (1)(iv) of this subsection shall be paid to an inmate's dependents through the local social services administration in the county in which the dependents reside.
- (c) If any part of the inmate's final earnings under a work-release plan are required to satisfy the obligatory deductions set forth in subsection (b) of this section, the balance of those earnings shall be forwarded to the inmate within 15 days after the inmate's release from the Division's jurisdiction.